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No. 87-1252

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

H.J. INC., *et al.*,
Petitioners,

v.

NORTHWESTERN BELL TELEPHONE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

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TABLE OF CONTENTS

	Page
INTEREST OF THE *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
Introduction	3
I. The Overall Purposes Of The Legislation	4
II. The RICO Title	5
A. The Statutory Language	5
B. The Congressional Intent	11
CONCLUSION	19

TABLE OF AUTHORITIES

Cases

Russello v. United States, 464 U.S. 16 (1983) 9
Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985) 7, 9, 17-18
Teamsters v. United States, 431 U.S. 324 (1977) 10
United States v. Burns, 683 F.2d 1056 (7th Cir. 1982), *cert. denied*, 459 U.S. 1173 (1983) 17
United States v. Hartley, 678 F.2d 961 (11th Cir. 1982), *cert. denied*, 459 U.S. 1170 (1983) 18
United States v. Lemm, 680 F.2d 1193 (8th Cir. 1982), *cert. denied*, 459 U.S. 1110 (1983) 17
United States v. Peacock, 654 F.2d 339 (5th Cir. 1981), *modified on reh'g*, 686 F.2d 356 (1983), *cert. denied*, 464 U.S. 965 (1983) 18
United States v. Turkette, 452 U.S. 576 (1981) 7

Statutes

Organized Crime Control Act of 1970, Title IX (Racketeer Influenced and Corrupt Organizations):
18 U.S.C. § 1961(1) 8, 13
18 U.S.C. § 1961(5) 8
18 U.S.C. § 1962 ..... 8, 13
Organized Crime Control Act of 1970, Pub. L. No. 91-452:
§ 1, 84 Stat. 922 4-5
§ 904(a), 84 Stat. 947 18
Civil Rights Act of 1964, Title VII, § 707(a), 42 U.S.C. § 2000e-6(a) 10

Legislative Materials Page

111 Cong. Rec. 14641 (1965) 11
113 Cong. Rec. 1585 (1967) 12
113 Cong. Rec. 1595 (1967) 12
115 Cong. Rec. 9566 (1969) 12
115 Cong. Rec. 9567 (1969) 7, 13
116 Cong. Rec. 585 (1970) 6, 12
116 Cong. Rec. 586 (1970) 6
116 Cong. Rec. 601 (1970) 6

TABLE OF AUTHORITIES—Continued

Page

116 Cong. Rec. 819 (1970) 6
116 Cong. Rec. 820 (1970) 7
116 Cong. Rec. 18912 (1970) 13
116 Cong. Rec. 18914 (1970) 17
116 Cong. Rec. 18939 (1970) 7
116 Cong. Rec. 18940 (1970) 8, 9, 13, 14, 15
116 Cong. Rec. 35193 (1970) 7
116 Cong. Rec. 35196 (1970) 7
116 Cong. Rec. 35200 (1970) 7
116 Cong. Rec. 35227 (1970) 17
116 Cong. Rec. 35344 (1970) 12, 17
116 Cong. Rec. 35347 (1970) 17
S. Rep. No. 617, 91st Cong., 1st Sess. (1969) 15, 16
Organized Crime Control: Hearings on S. 30 and Related Proposals Before Subcomm. No. 5 of the House Comm. on the Judiciary, 91st Cong., 2d Sess. (1970) 9, 17
S. 2187, 89th Cong., 1st Sess. 11
S. 678, 90th Cong., 1st Sess. 12
S. 1861, 91st Cong., 1st Sess. 12
S. 30, 91st Cong., 1st Sess. 12

Miscellaneous

Webster's Third New International Dictionary (1971) 10
Webster's New World Dictionary (2d college ed. 1984) 10, 16
Roget's International Thesaurus ¶ 642.4 (4th ed. 1977) 10

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

This brief *amicus curiae* is filed with the consent of the parties, as provided for in the Rules of the Court.

INTEREST OF THE *AMICUS CURIAE*

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a federation of 90 national and international unions with a total membership of over 13,000,000 working men and women. Private civil RICO actions have become a tool for harassment through the bringing of strike suits against legitimate business and labor organizations. Such suits are outside the ambit of the statute properly interpreted as we show in the argument that follows.

SUMMARY OF ARGUMENT

The overall purpose of the Organized Crime Control Act of 1970—of which the Racketeer Influenced and Corrupt Organizations Title is one part—was to deal with the discrete law enforcement problems presented by organized crime. Congress believed the laws then on the books were sufficient to deal with wrongs, including repetitive wrongs, committed by legitimate businesses and unions. But Congress concluded that organized crime—by which term Congress had in mind specifically the Mafia—presented a particularly virulent strain of self-perpetuating criminality that had proved resistant to conventional methods of legal control.

In this brief, we analyze the language and the history of the RICO Title's "pattern of racketeering activity" requirement. We show that Congress intended that to the extent possible the unique and far-reaching prohibitions, penalties, and remedies of RICO would apply only to organized crime. The pattern requirement was the means by which Congress sought to accomplish that purpose. Congress intended that requirement to assure that RICO would be applicable only to organized crime or to groups that have the characteristics that are the hallmarks of organized crime.

Reading the words of the statute in light of the clearly expressed congressional objective points to the following conclusion: The connective link necessary to meet the pattern requirement is a showing that the ongoing criminal conduct in question is the work of a group dedicated to the pervasive, self-reinforcing and self-perpetuating commission of offenses that constitute racketeering activity. Under this standard, the allegations of the complaint here are insufficient to charge Northwestern Bell or its officers and agents with engaging in a pattern of racketeering.

ARGUMENT

Introduction

The instant case raises in sharp relief the following question: does a plaintiff (or a prosecutor) state a case under the "Racketeer Influenced and Corrupt Organizations" (RICO) Title of the Organized Crime Control Act of 1970, by pleading that certain officials and agents of a business corporation—which, in fact, provides a useful, lawful service (here a telephone company)—have repeatedly over a number of years committed a particular type of criminal wrong (here bribery of public officials who regulate the Company's operations) in order to further the corporation's business interests? We submit that the answer to that question is "no."[1]

Repetitive wrongdoing—especially criminal wrongdoing—by businesses in order to increase their income or expand their market is, it goes without saying, a serious social problem, and such a course of conduct has long been subject to sanction under numerous state and federal laws. But Congress, in enacting the Organized Crime Control Act, proceeded on the premise that those laws are sufficient to contain that type of wrongdoing.

The 1970 Congress was concerned instead with a strain of wrongdoing that, in its judgment, is more virulent, more resistant to conventional legal redress and that, therefore, poses an even greater threat to the body politic: wrongdoing by organized groups formed and maintained to engage in certain types of criminal activity. The distinguishing feature of these groups is that *both their means and their ends are criminal.* Such groups, in Congress' judgment, and this seems intuitively correct, are particularly dangerous because

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[1] Because of the facts of this case, in this brief we discuss the issue presented in terms of RICO's proper application to businesses such as Northwestern Bell. The analysis is equally applicable to RICO's proper application to AFL-CIO unions.

their criminal activity is self-perpetuating: the proceeds of each successful criminal act are used to finance both the continuation of the criminal enterprise and the commission of further crimes. Organized crime acitvity, in other words, has a metastasizing quality that sets it apart from other types of wrongdoing whether the others are repetitive or not.

Because it has been such a point of controversy, we hasten to add that while Congress viewed the Mafia as the paradigm example of organized crime, RICO is not limited to individuals or groups of individuals who are racketeers, in some colloquial sense. Rather, our point is that Congress, by reason of its investigations, came to a conclusion as to the characteristics of organized crime as a class and determined to authorize the use of innovative and far-reaching fact-finding procedures and remedial schemes against, and *only* against, those who share those characteristics.

I. The Overall Purposes Of The Legislation.

As we develop below, the most critical operative term in the RICO Title of the Organized Crime Control Act is "pattern of racketeering activity." It facilitates the understanding of that term, which is *not* defined in the Act, to begin by reviewing the legislation's overall purposes which are described with clarity and in detail in § 1:

> The Congress finds that (1) *organized crime* in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) *organized crime* derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this

> money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) *organized crime* activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) *organized crime* continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in *organized crime* and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.
>
> It is the purpose of this Act to seek the eradication of *organized crime* in the United States by strengthening the legal tools in the evidence-gathering process,, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in *organized crime*. [Pub. L. No. 91-452, § 1, 84 Stat. 922 (1980); emphasis added.]

The foregoing makes it absolutely plain that Congress had concluded that there is a discrete phenomenon which the Legislature labelled "organized crime," that organized crime presents a special danger to the country, that organized crime could not be controlled by the then-current system of law enforcement and that it is, therefore, necessary to "strengthen[] the legal tools . . . to deal with the unlawful activities of those engaged in organized crime." And it is a fair inference from ¶ 3 of § 1 that organized crime is distinct from "legitimate business and labor unions."

The sponsors of the Organized Crime Control Act, moreover, stated explicitly what "organized crime" en-

compasses. Senator McClellan, quoting President Nixon's "Message on Organized Crime," described organized crime as an "alien organization . . . a totalitarian and closed society operating within an open and democratic one." 116 Cong. Rec. 585 (1970). Organized crime in this country, the Senator explained, "is directly descended from and is patterned upon the centuries-old Sicilian terrorist society, the Mafia. This organization, also known as Cosa Nostra, operates vast illegal enterprises that produce an annual income of many billions of dollars. This combine has so much power and influence that it may be described as a private government of organized crime." *Id.* at 586 (quoting S. Rep. No. 72, *Organized Crime and Illicit Traffic of Narcotics*, 85th Cong., 1st Sess. 117 (1965)). "The most influential" of the organized crime groups are "the 26 families of La Cosa Nostra, estimated to have a total membership of some 3,000 to 5,000." 116 Cong. Rec. 585 (1970). "[T]hese groups," Senator Hruska added, "are allied with other racket enterprises to form a loose confederation operating in both large and small cities." *Id.* at 601. Organized crime groups "are chiefly active in syndicated gambling, the importation, and distribution of narcotics, and loan sharking . . . ." *Id.* at 586 (remarks of Senator McClellan). And Senator Scott summed up the matter in these terms:

> Syndicated crime operates outside legitimate government. It involves thousands of criminals in structures as complex and large as any corporation with laws rigidly enforced through terror. Its operations are national and international. Its aims are to monopolize whole fields of activity—legal and illegal —in order to amass huge profits, currently estimated at several billion dollars each year. [116 Cong. Rec. 819 (1970).]

Title IX of the Organized Crime Control Act—the RICO Title—was designed to address a particular aspect of the threat posed by organized crime: "[T]he major

purpose of Title IX is to address the infiltration of legitimate business by organized crime." *United States v. Turkette*, 452 U.S. 576, 591 (1981). *See* 116 Cong. Rec. 18939 (1970) (RICO "is aimed at removing organized crime from our legitimate organizations") (remarks of Sen. McClellan); 115 Cong. Rec. 9567 (1969) (RICO "is designed to attack the infiltration of legitimate business") (remarks of Sen. McClellan); 116 Cong. Rec. 820 (1970) (RICO is "a means to excise syndicate-infiltrated businesses") (remarks of Sen. Scott); *id.* at 35193 (need "for a frontal attack on the subversion of our economic system by organized criminal activities") (remarks of Rep. Poff); *id.* at 35196 (1970) ("Title IX is designed to inhibit the infiltration of legitimate business by organized crime") (remarks of Rep. Celler); *id.* at 35200 (Title IX "is aimed at keeping organized crime out of legitimate businesses") (remarks of Rep. St. Germain).[2]

There is no allegation here that Northwestern Bell or the persons who direct Northwestern Bell are part of, or associated with, "organized crime" as that term was understood by the Congress that enacted RICO. This case then is one more of the myriad of cases in which the plaintiffs seek a judicial ruling that continues a process whereby "RICO is evolving into something quite different from the original conception of its enactors." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 500 (1985).

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[2] In *Turkette*, this Court interpreted Title IX also to reach organized crime activities that are wholly illegitimate:

> In view of the purposes and goals of the Act, as well as the language of the statute, we are unpersuaded that Congress nevertheless confined the reach of the law to only narrow aspects of organized crime, and, in particular, under RICO, *only* the infiltration of legitimate business. [452 U.S. at 590; emphasis in original.]

The ultimate question posed by this case is whether that process of evolution correctly captures the meaning of the statutory words Congress used to express that conception. If so, the task of correcting the divergence between the enactors' conception and the articulation of that conception in positive statutory law would be for Congress; if not the task of correlating the two is for this Court.

II. The RICO Title.

A. *The Statutory Language*

As we noted at the outset the concept of a "pattern of racketeering activity" is at the core of each of the RICO Title's prohibitions, and the meaning of that concept is of the essence here. Those prohibitions are fully stated in 18 U.S.C. § 1962: § 1962(a) prohibits the investment in an enterprise of income derived through a pattern of racketeering activity; § 1962(b) prohibits the acquisition or maintenance of an interest in an enterprise through a pattern of racketeering activity; and § 1962(c) prohibits the conduct of affairs of an enterprise through a pattern of racketeering activity. Very simply stated, there can be no RICO violation without proof of a "pattern of racketeering activity."

RICO does provide a definition of "racketeering activity" in the normal sense of a definition. Section 1961(1) states that "racketeering activity" is the commission of any one of a list of specified federal and state crimes. The offenses on that list were selected because the crimes are "committed by organized crime with substantial frequency, as part of [organized crime's] commercial operations." 116 Cong. Rec. 18940 (1970). In contrast § 1961(5) which concerns "*pattern* of racketeering activity" is not a definition at all but a statement of a minimum proof requirement:

> "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

As Senator McClellan, the sponsor of, and floor leader for, the bill in the Senate, stressed:

> [A] careful reading of title IX would have informed . . . that a pattern under title IX is not defined as two or more acts of racketeering activity, but requires them. [116 Cong. Rec. 18940 (1970).]

And as this Court added in *Sedima*:

> [T]he definition of a "pattern of racketeering activity" differs from the other provisions of § 1961 in that it states that a pattern "*requires* at least two acts of racketeering activity," § 1961(5) (emphasis added), not that it "means" two such acts. The implication is that while two acts are necessary, they may not be sufficient. Indeed, in common parlance two of anything do not generally form a "pattern." [473 U.S. at 496 n.14.]

Thus, the scope of the RICO Title turns on the meaning of one word—"pattern"—and that word is used but not specifically defined in RICO. And this Court has stated that where a term "is not specifically defined in the RICO statute [, t]his silence compels us to 'start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used.'" *Russello v. United States*, 464 U.S. 16, 21 (1983). *See also Organized Crime Control: Hearings on S. 30 and Related Proposals Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong., 2d Sess. 665 (1970) (hereinafter "House Hearings") (statement of Ronald L. Gaines, United States Department of Justice) (the bill "says 'pattern,' and pattern has to be construed with its normal meaning").

The relevant dictionary definitions of "pattern" include: "something regarded as a normative example to

be copied"; an "archetype"; an "exemplar"; "a representative instance"; "a typical example"; "a specimen offered as a sample of the whole"; "a reliable sample of traits, acts, or other observable features characterizing an individual." Webster's Third New International Dictionary 1657 (1971).

Thus, where a pattern of human behavior exists, repetitive sampling of events over time should reveal a common mode of conduct. Accordingly, with particular respect to "pattern" in the context of human behavior, the dictionary states: "a regular, mainly unvarying way of acting or doing." Webster's New World Dictionary 1042 (2d college ed. 1984). "Pattern" may be a synonym for "habit," "custom," "practice," or "characteristic." Roget's International Thesaurus ¶ 642.4 at p. 494 (4th ed. 1977).

This Court has, indeed, interpreted the word "pattern" in similar fashion in construing the meaning of the "pattern or practice" requirement in § 707(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-6 (a). *Teamsters v. United States*, 431 U.S. 324, 336 (1977), states:

> [B]ecause it alleged a systemwide pattern or practice of resistance to the full enjoyment of Title VII rights, the Government ultimately had to prove more than the mere occurrence of isolated or "accidental" or sporadic discriminatory acts. It had to establish by a preponderance of the evidence that racial discrimination was the company's *standard operating procedure*—the *regular* rather than the *unusual* practice. [Emphasis added.]

Thus, at the very least, a plaintiff (or a prosecutor) in a RICO action must establish that the "racketeering activity" alleged (and proved) is an example of the defendant's "regular, mainly unvarying way of acting or doing," or is "custom[ary]," or is "characteristic" of the defendant's behavior.

B. *The Congressional Intent*

The pure definition of pattern—left wholly at large without any context—still leaves us somewhat short of what we would ideally wish to know in order to be able to interpret the RICO Title correctly. What is to this point lacking is an understanding of the function Congress intended the pattern requirement to perform in the overall RICO scheme.

That understanding is necessary in order to choose between the two types of patterns Congress might have had in mind. Was Congress' concern that the plaintiff (or prosecutor) show a number of racketeering crimes sufficient to support a rational inference that committing such wrongs is characteristic of the defendant's behavior? Or, as is suggested by the materials discussed *supra* at 4-7, was Congress' concern that the plaintiff (or prosecutor) show that the racketeering activity is of the same nature and quality as the wrongful activity that is characteristic of organized crime as a class? While the relevant legislative discussion is of limited scope, it is the second understanding of the pattern requirement that best captures Congress' intent.

In the earliest efforts to fashion stronger law enforcement tools against organized crime, Senator McClellan sought to make it a crime to be a member of the Mafia or of similar criminal organizations. Thus, in 1965 Senator McClellan introduced S. 2187, 89th Cong., 1st Sess., which made it "a violation of Federal law for any person to join the Mafia or any other organization which is dedicated to the commission of crimes." 111 Cong. Rec. 14641 (1965) (remarks of Sen. McClellan). In 1967, the Senator introduced a bill based on the same approach which would have made it a crime to be a member of any organization "having for one of its purposes" the violation of the criminal laws "relating to gambling, extortion, blackmail, narcotics, prostitution, or labor-

racketeering." S. 678, 90th Cong., 1st Sess., *reprinted at* 113 Cong. Rec. 1595 (1967). Senator McClellan explained that "[o]rganized crime syndicates in this country are a fact, and Congress should combat this danger with every possible means." *Id.* at 1585.

The proposal to create a crime based on membership in a group was thought to raise a number of significant constitutional questions. Attorney General Katzenbach in his testimony cited possible violations of the First and Fifth Amendments: "[the legislation] raises a number of constitutional questions of such substance that at the very least its effectiveness is likely to be impaired by prolonged litigation." 116 Cong. Rec. 35344 (1970) (quoted in remarks of Rep. Poff). And Senator Hruska, while describing the objectives of S. 678 as "most laudable," could not "in good conscience support [the bill], as there appear to be several fundamental constitutional questions which would arise should the bill become law." 113 Cong. Rec. 1595 (1967).[3] Neither of these bills was enacted by Congress.

Then, in 1969, Senator McClellan introduced S. 1861, 91st Cong., 1st Sess., the bill that ultimately became the RICO Title of the Organized Crime Control Act.[4] Like its predecessors, S. 1861 was aimed at combating organized crime. As Senator McClellan explained on introducing the bill: "The problem, simply stated, is that organized crime is increasingly taking over organizations

[3] The same objections were raised against an amendment to RICO, employing a similar approach, that was proposed by Rep. Biaggi after the Senate's passage of the bill in 1970. 116 Cong. Rec. 35344 (remarks of Rep. Poff); *id.* at 35343-44 (remarks of Rep. Celler).

[4] S. 30, 91st Cong., 1st Sess., which became the Organized Crime Control Act, was introduced on January 15, 1969. During the legislative process S. 30 was amended through the incorporation of seven other bills dealing with organized crime. One of those bills, S. 1861, which was introduced on April 18, 1969, 115 Cong. Rec. 9566, became the Act's RICO Title. 116 Cong. Rec. 585 (1970).

in our country . . . . Efforts to dislodge them so far have been of little avail." The aim of the bill was thus "[t]o aid in the pressing need to remove organized crime from legitimate organizations in our country." 115 Cong. Rec. 9567 (1969).

While the objective remained the same, S. 1861 used a different approach to reaching that end. Rather than proscribe mere membership in a group, the bill proscribed conduct characterized by three essential elements. The first is the commission of specified crimes that are commonly associated with organized crime; as finally enacted, these crimes comprise the "racketeering activity" delineated in 18 U.S.C. § 1961(1). The second element is the "pattern of racketeering activity" requirement. And the third element is that the pattern of racketeering activity must be connected with one of the three evils of organized crime specifically addressed in § 1962. *See supra* at 8.

Objections were made to this approach by a number of commentators, and particularly by the American Civil Liberties Union and the Association of the Bar of the City of New York. 116 Cong. Rec. 18912 (1970). A major complaint voiced by these objectors was that the RICO Title was drafted too broadly and would reach persons not connected with organized crime. In particular, the complaint was made that "the list [of offenses constituting racketeering activity] is too inclusive, since it includes offenses which often are committed by persons who are not engaged in organized crime." *Id.* at 18940.

Senator McClellan began his response to this complaint by acknowledging the correctness of the premise:

> The Senate report does not claim, however, that the listed offenses are comitted primarily by members of organized crime, only that those offenses are characteristic of organized crime. The listed offenses lend themselves to organized commercial exploitation,

unlike some other offenses such as rape, and experience has shown they are commonly committed by participants in organized crime. That is all the title IX list of offenses purports to be, that is all the Senate report claims it to be, and that is all it should be.

Members of La Cosa Nostra and smaller organized crime groups are sufficiently resourceful and enterprising that one constantly is surprised by the variety of offenses that they commit. It is impossible to draw an effective statute which reaches most of the commercial activities of organized crime, yet does not include offenses commonly committed by persons outside organized crime as well.

• • •

It is self-defeating to attempt to exclude from any list of offenses such as that found in title IX all offenses which commonly are committed by persons not involved in organized crime. Title IX's list does all that can be expected . . . it lists offenses committed by organized crime with substantial frequency as part of its commercial operations. [116 Cong. Rec. 18940.]

Senator McClellan went on to make clear, however, that RICO was *not* intended to reach beyond organized crime. Senator McClellan explained that the critical limitation is to be found not in the list of predicate crimes but in RICO's other requirements, particularly the pattern requirement.

Thus, Senator McClellan minimized the "danger that commission of such [listed] offenses by other individuals would subject them to proceedings under title IX . . . [,] since commission of a crime listed under title IX provides only one element of title IX's prohibitions." *Id.* at 18940. Senator McClellan then discussed the other elements of the prohibitions, focusing on the pattern requirement.

In this context Senator McClellan left no doubt that the pattern requirement was meant to serve an important substantive role in the RICO scheme: that requirement was designed to guard against the extension of RICO beyond organized crime. Senator McClellan took particular pains in this regard to disclaim the notion that "pattern of racketeering activity" is simply a numerical, rather than a qualitative, requirement:

> [A] careful reading of title IX would have informed the [ACLU] that a pattern under title IX is not defined as two or more acts of racketeering activity, but requires them. As the Senate committee report points out:
>
> > The target of title IX is thus not sporadic activity. The infiltration of legitimate business normally requires more than one "racketeering activity" and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern—report at 158.
>
> The term "pattern" itself requires the showing of a relationship, and the committee report thus reinforces that interpretation. So, therefore, proof of two acts of racketeering activity, without more, does not establish a pattern and the ACLU's fears are unwarranted. [*Id.* at 18940] [5]

This authoritative explanation of the pattern requirement is instinct with the understanding that the require-

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[5] *See also* S. Rep. No. 617, 91st Cong., 1st Sess. 158 (1969) (hereinafter "Senate Report") ("The concept of 'pattern' is essential to the operation of the statute.") The Senate Report also states:

> The concept "pattern" is thought to provide no due process constitutional barrier to criminal sanctions, as a "racketeering activity," defined above, must be an act in itself subject to criminal sanction and any proscribed act in the pattern must violate an independent statute. See *United States v. Nardello*, 393 U.S. 286 (1969). [*Id.*]

The quoted passage proceeds on the understanding that "pattern" provides a means to limit the reach of the legislation only to organized crime without running afoul of the constitutional problems that were incident to the membership approach in the prior bills.

ment imposes a greater burden on the plaintiff (or prosecutor) than a showing of a sufficient number of repetitions of crimes constituting "racketeering activity" to support the inference that committing such crimes is a characteristic of the defendant's behavior. Indeed, had Congress intended merely a numerical requirement, such a requirement could have been stated simply and directly in numerical terms.

The Senate Report quoted by Senator McClellan—S. Rep. No. 617, 91st Cong., 1st Sess. 158 (1969)—confirms that, except for the minimum requirement of two instances of racketeering activity, the pattern requirement calls for a qualitative rather than a quantitative determination. Thus, the Report states: "It is this factor of continuity plus relationship which combines to produce a pattern." *Id.*

"Continuity," to go back to the dictionary, means "a continuous flow, series, or succession; unbroken, coherent whole." Webster's New World Dictionary 308 (2d college ed. 1984). This definition is of a piece with the understanding that "pattern of racketeering activity" requires that the commission of such wrongs be the standard operating procedure, the habitual or customary business, of the defendants. *See supra* at 9-10.

What "relationship" adds to the mix depends on the kind of connective link Congress had in mind; and what Congress had in mind is most clearly revealed by the materials that indicate what Congress was trying to achieve through the pattern requirement. Having moved from an approach based on membership to one based on conduct, Congress needed a means to ensure that the extraordinary remedies and heightened penalties of RICO would apply only to the intended object of the legislation: organized crime. As Senator McClellan emphasized, the pattern requirement was intended to minimize the "danger" of application of RICO to persons not involved in

organized crime. *See supra* at 14. And it was understood by Congress that the reach of the RICO Title beyond organized crime would be at most "incidental." *See* 116 Cong. Rec. 18914 (1980) (remarks of Sen. McClellan); *id.* at 35344 (remarks of Rep. Poff).[6]

Since Congress' objective in adopting the pattern requirement was to minimize the application of RICO beyond organized crime, "relationship," as the Senate Report uses that term, is best understood as meaning a showing that the ongoing criminal conduct in question is the work of a group dedicated to the pervasive, self-reinforcing and self-perpetuating commission of offenses that constitute racketeering activity. *See supra* at 3-4.

Reading "pattern of racketeering activity" as we have suggested assures that any expansion of RICO beyond organized crime in its traditional sense would occur only when a group follows the operating procedures that Congress associated with recognized organized crime syndicates, and this reading is thus faithful to Congress' intent.[7]

While the Court has not yet had the occasion to construe the "pattern" requirement, Justice Powell did a first essay in his dissenting opinion in *Sedima*. His sum-

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[6] The same substantive provisions of RICO apply whether an action is civil or criminal in nature. The provision for a private civil RICO action received little attention during the legislative process. But the sponsor of the provision made clear that the target of such actions was organized crime. Thus, Rep. Steiger stated that the provision would afford a remedy to "the victims of organized crime" and "those of us who have been seriously affected by organized crime." 116 Cong. Rec. at 35347; House Hearings at 420 (statement of Rep. Steiger). *See also* 116 Cong. Rec. 35227 (1970) (remarks of Rep. Steiger).

[7] *See, e.g., United States v. Burns*, 683 F.2d 1056 (7th Cir. 1982), *cert. denied*, 459 U.S. 1173 (1983); *United States v. Lemm*, 680 F.2d 1193 (8th Cir. 1982), *cert. denied*, 459 U.S. 1110 (1983);

mary of that requirement correctly captures the role of "pattern of racketeering activity" in the RICO scheme, and thus bears repeating:

> "The 'pattern' element of the statute was designed to limit its application to planned, ongoing, continuing crime. . . . [Congress intended] to keep the reach of RICO focused directly on traditional organized crime and comparable ongoing criminal activities carried out in a structured, organized environment. The reach of the statute beyond traditional mobster and racketeer activity and comparable ongoing structured criminal enterprises was intended to be incidental, and only to the extent necessary to maintain the constitutionality of a statute aimed directly at organized crime." [473 U.S. at 526 (quoting Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law 71-72 (1985)).]

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Congress in the pattern requirement made manifest its intention that RICO should apply only to organized crime or to groups having the characteristics that are the hallmarks of organized crime. That being so, the allegations in the complaint here are insufficient to charge Northwestern Bell or its officers and agents with engaging in a pattern of racketeering activity.[8]

United States v. Hartley, 678 F.2d 961 (11th Cir. 1982), *cert. denied*, 459 U.S. 1170 (1983); *United States v. Peacock*, 654 F.2d 339 (5th Cir. 1981), *modified on reh'g*, 686 F.2d 356 (1983), *cert. denied*, 464 U.S. 965 (1983).

[8] The "liberal construction" clause in RICO, which provides that "[t]he provisions of this title shall be liberally construed to effectuate its remedial purposes," Pub. L. No. 91-452, § 904(a), 84 Stat. 947, is of no aid to the plaintiffs here. The question in this case is not what the remedy should be for a proven RICO violation; rather, the question is whether Congress intended the conduct in question to be a violation of RICO. It would not "effectuate [Congress'] remedial purposes" to "liberal[ly] construe]" RICO to prohibit conduct that Congress did not intend RICO to prohibit. *See Sedima*, 473 U.S. at 491-92 n.10.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals for the Eighth Circuit in this case should be affirmed.

Respectfully submitted,

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